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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,767	05/12/2005	Alain Durr	16528.2a.3a	8884
22913 7590 07/29/2008 WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111				
EXAMINER KASHNIKOW, ERIK				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
07/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,767

Applicant(s)

DURR, ALAIN

Examiner

ERIK KASHNIKOV

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-8 and 10-13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 05/12/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is in regards to the requirement that the safety sealing tape completely encircles the entire invention. This is not shown in the specification and is therefore new matter.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed.

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Cir. 1999). The term "Opaque" in claim 10 is used by the claim to mean "almost opaque, letting some light through or translucent", while the accepted meaning is "no light is allowed through." The term is indefinite because the specification does not clearly redefine the term.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cavanagh et al. (US 3,955,020).

8. In regards to claim 1 Cavanagh et al. teaches a bottle with a multilayer plastic laminate (column 1 lines 53-67). Cavanagh et al. teach that one of the plastic layers can be of an opaque design (Claim 3) and is made so by adding pigment (Cavanagh column 5 lines 5-15), which would allow one of ordinary skill in the art to adjust the amount of light let through, if any. It is well within the ability of one of ordinary skill in the art at the time of the invention to adjust the pigment to achieve different levels of light passing through the container. One of ordinary skill in the art would be motivated to do so, based on the end use of the bottle.

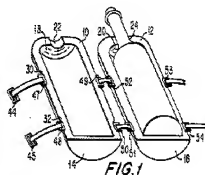
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9. Cavanagh et al. also teach that the covering can cover from the bottom of the bottle to the shoulders at the top of the bottle (column 4 lines 54-55).
10. In regards to claim 2 Cavanagh et al. teach that the opaqueness of the bottle can be caused by a coloring material to the one of the plastic layers (claim 4)
11. In regards to claim 3 Cavanagh et al. teach that the layers on the outside of the bottle can be formed from polyethylene, polyvinylchloride, and others (column 4 lines 65-68).
12. In regards to claim 4 Cavanagh et al. show in figure 2 that the plastic layer is laying fully against the container wall.
13. In regards to claim 11 Examiner points out that a vial is defined by dictionary.com as a glass vessel or bottle, especially for use for medicines (<http://dictionary.reference.com/browse/vial>). As Cavanagh et al. teach that the laminate of their invention is to be used for bottles, one of ordinary skill in the art at the time of the invention would realize that this includes vials.
14. In regards to claim 12 it is well known that medicines can be in liquid form, as such it would be well within the ability of one of ordinary skill in the art to put medicine into the bottle of Cavanagh as discussed above. One of ordinary skill in the art at the time of the invention would be motivated to do this to help limit the risk of losing medicine due to inadequate protection of the bottle.
15. While Cavanagh et al are silent regarding the plastic layer covering the entire bottle, they do teach that the plastic layers cover the entire straight portion of the bottle, but that further protection to the heel and shoulders can be added (column 2 lines 49-

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51). Cavanaugh et al. also teach that the plastic layer can be further combined with plastic caps for the head and heel of the bottle. This embodiment would be obvious to one of ordinary skill in the art as it would offer even more protection to the bottle. It would be well within the ability of one of ordinary skill in the art at the time of the invention to extend the plastic layers to cover these portions of the bottle. One would be motivated to extend the plastic layers to increase the protection offered by the layers.

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cavanagh et al. (US 3,955,920) in view of Norwood (US 4,281,520).



17. As stated above Cavanagh et al. teach a multilayer laminate attached to the outside of a bottle. However they are silent regarding the laminate being in the form of half shells.

18. Norwood teaches an apparatus for keeping bottles cool.

19. In regards to claim 5 the cooling apparatus of Norwood is a half shell shaped multilayer plastic laminate (Fig. 1).

20. One of ordinary skill in the art at the time of the invention would be motivated to modify the plastic film used to cover bottles of Cavanagh with the half shell shape plastic film design used to cover bottles of Norwood, because the design of Norwood offers the ability to easily use one cover with a broad range of bottle shapes and sizes (column 3 lines 20-30).

21. Claim 6-8, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cavanagh et al. (US 3,955,920) in view of Witkowski (US 5,525,383).
22. As stated above Cavanagh et al. teach a multilayer laminate attached to the outside of a bottle. However they are silent regarding the inclusion of tape to seal the half shells.
23. Witkowski teaches a liquid container (column 2 line 19), with a tubular sleeve mounted on the outside wall of the container (column 2 line33). Witkowski also teaches that the tubular sleeve can be made of any plastic film (column 4 lines 59-61), and can be transparent or translucent (column 4 line 20-21).
24. In regards to claim 6 as stated above Witkowski teaches that the sleeve can be formed by a sheet of any plastic material. Witkowski teaches that the sheets are formed into a tube (column 5 line 16). Witkowski teaches that the plastic film wrapped around the container can be closed by tape (column 5 line 18).
25. In regards to claim 7 Witkowski et al teach that the sheet can be printed on while on the container, which would require that the design be printed onto the tape that is holding the clam shells together (column 4 lines 45-51).
26. In regards to claim 8 Cavanagh et al. teach that the outer layer is attached to the container by use of an adhesive (column 5 line 60 column 6 line 20).
27. In regards to claim 10 Witkowski teaches that the claimed invention can be used to hold different ingredients such as beer or soda (column 1 lines 21-22). Making it so all the containers are identical except for a number or letter on the outer side of the

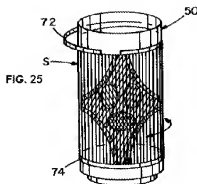
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container is just a design choice, and would have been an obvious variant to one of ordinary skill in the art at the time of the invention.

28. Also in regards to claim 10 Cavanagh teaches that the inner lamina **may** be opaque, and is made so by adding pigment (Cavanagh column 5 lines 5-15).

29. In regards to claim 13 Witkowski et al. shows an example in Fig 25, and column 9 lines 25-37 wherein the tape completely encircles the container.

30. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the inventions of Cavanagh and Norwood with the invention of Witkowski because the invention of Cavanagh and Norwood provides an attractive decoration as well as protection for a wide variety of containers against shattering and scattering of broken glass pieces if the container manages to break (column 1 lines 55-60), while the invention of Witkowski also offers a wide variety of decorating options as well as being inexpensive and durable (column 1 lines 24-28).



Response to Arguments

31. In regards to Applicant's arguments concerning the motivation to extend the opaque lamina to cover more of the bottle, Examiner points out that Cavanagh teach that a common method of protecting the bottle is by providing plastic caps, which would cover the heel and shoulder of the bottle. A fair reading of the reference would show

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that Cavanagh et al. further teach that this is one option for protecting the head and shoulder of the body, but do not limit it to the only option. One of ordinary skill would be motivated to extend the opaque lamina to the heel and shoulders to offer the protection against shattering to the head and shoulders of the bottle, one would also be motivated to use the lamina instead of the plastic caps, since it would be cheaper, and an easier fabrication process since only one material would be used. Also depending on the end use of the bottle one of ordinary skill in the art could be motivated to use either the plastic cap, an extension of the opaque lamina or a combination of the two. Examiner also points out that while extending the protection on the cylindrical section of the body may add cost and make the process more complex, given that Cavanagh itself discloses providing such further protection, it is clear that it would have been obvious to one of ordinary skill of the art to add protection regardless of the cost or complexity.

32. In regards to Applicant's arguments concerning the fact that Cavanagh is silent regarding the limitation that one would be able to see undissolved particles in the bottle but would not be able to tell the color of the liquid, Examiner points out that the common definition of opaque means no light gets through, and therefore one would not be able to see color or undissolved pigments. Further as stated above Cavanagh teaches opacity in the films of their invention which is the same as Applicant's limitation. Finally as stated above Cavanagh et al. teach that the opacity is created by adding pigments, it is well within the ability of one of ordinary skill in the art at the time of the invention to adjust the pigment to achieve different levels of light passing through the container.

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One would of ordinary skill in the art would be motivated to do so, based on the end use of the bottle.

33. In regards to Applicant's arguments regarding Witkowski, applicants argue, and Examiner agrees, that Witkowski does not disclose synthetic jacket that comprises two half shells connected hingedly with each other which is why a new reference, Norwood, is now used to meet the limitations of claim 5. With respect to Applicant's argument that Witkowski does not disclose the jacket covering the container wall or the limitations as to the opacity of the container wall, Examiner points out that while Witkowski does not disclose all the features of the present claimed invention, Witkowski is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794